Encik Adam counsel for the respondents argued that no notice was given in accordance with O.64 r.13 of the Rules of the Supreme Court. To my mind this irregularity, if any, does not in the light of O.70 r.1(1) nullify the proceedings. Apart from this Encik Adam also raised the question of *res judicata*. In my view this question does not arise in the present case.

The question that really calls for determination in the present case is whether the respondents have shown any substantial defence. In so far as the second respondent is concerned he has completely failed to raise any defence. And as for the first respondent I find that he has also failed to show any real and substantial defence. The letters produced by the applicant in support of the application do show that the plaintiff did carry out the works pursuant to the request by the solicitors acting for both the respondents and in this respect the respondents have made no denial at all. The circumstances in the present case do show that the statement of defence of both the first and the second respondents to be frivolous and vexatious and an abuse of the process of the court and I therefore see no reason whatever to disallow the application. For these reasons I hereby order the defence of both respondents to be struck out and that final judgment be entered in terms prayed in favour of the applicant with costs.

Application allowed.
Defence to be struck out.

Solicitors: *Skrine & Co.; T. Tharu & Co.*

KUMPULAN PEMBINAAN (M) SDN. BHD. v. TRACTORS (M) BHD.

[O.C.J. (Abdul Hamid J.) August 22 and November 14, 1977]
[Kuala Lumpur — Civil Suit No. 2312 of 1976]

Practice and Procedure — Application to strike out statement of claim — Application involved issues of law and fact — Inapplicability of R.S.C. 1957, O. 25 r. 4.

The plaintiffs claimed against the defendants a sum of $63,784.84 for loss and damage suffered due to wrongful repossession of a tractor under a hire purchase agreement. The plaintiffs alleged that after the termination of the hiring of the said tractor, the plaintiffs offered to purchase it from the defendants. The plaintiffs contended that there was an outright purchase with deferred payments. There was default in the payment of the balance of the purchase price and the defendants wrongfully repossessed the tractor exercising the right under the Hire Purchase Act 1967. The plaintiffs' contention was that the defendants had no such right and the Act did not apply as this was essentially a case of debt due and payable.

The defendants argued that there was no loss or damage suffered by the plaintiffs and that the plaintiffs could not bring this action against the defendants on the ground that the dispute, if any, arising out of the said repossession was settled by a compromise between the parties. The defendants admitted repossessing the tractor but denied that it was wrongful. The defendants applied to strike out the statement of claim.

Held: (1) the application did not squarely fall within the scope of Order 25 R.S.C. which primarily covered a point of law which, if decided in one way, was to be decisive of litigation; Order 25 rule 4 only applied to an application which clearly related to a plain and obvious issue of law;

(2) in this case in view of the points of law involved and the facts which seemed to be in dispute, the court was not satisfied that the plaintiffs' contention was devoid of any merit whatsoever and therefore this was not a case which the court ought to summarily strike out the statement of claim.

Cases referred to:-

(1) In *re Harmony and Montague Tin & Copper Mining Co.; Spargo's Case* (1873) L.R. 8 Ch. App. 407.

(2) *Re Moody* Australian Bankruptcy Cases Vol. 14 p. 51.

CIVIL SUIT.

T. Thomas for the applicants/defendants.

Jag-jit Singh for the respondents/plaintiffs.

Abdul Hamid J.: The plaintiffs are claiming a sum of $63,784.84 for loss and damage suffered due to wrongful repossession of one unit of Caterpillar Tractor Model D7F bearing serial No. 91E697 under a hire purchase agreement dated April 5, 1975 made between the plaintiffs and the defendants.

The plaintiffs allege that after the termination of the hiring they applied to purchase the tractor from the defendants and pursuant to the offer the defendants sold the tractor for a purchase price of $173.500.

The plaintiffs contend that this was an outright purchase with deferred payments. They also contend that they paid a total sum of $121,450 commencing on April 5, 1975 and thereafter on the 5th of each month until September 5, 1975.

There was default in the payment of balance purchase price and the defendants wrongfully repossessed the tractor exercising the right under the Hire Purchase Act, 1967 (I shall hereafter call "the Act"). It is the plaintiffs' contention that the defendants had no such right and the Act did not apply as this was essentially a case of debt due and payable.

The grounds in support of the defendants' application to strike out the claim are set out in the affidavit affirmed by one Wan Chee Chuan Credit Control Manager of the defendant company. It is the defendants' contention that there was no loss or damage suffered by the plaintiffs and that the plaintiffs cannot bring this action against the defendants on the ground that the dispute, if any, arising out of the said repossession was settled by a compromise between the parties.

Repossession has not been disputed but the defendants deny that it was wrongful. It is averred that due to the plaintiffs' default in payment the defendants served on August 15, 1975 on the plaintiffs' notice intimating their intention to repossess pursuant to section 15 of the Act unless arrears amounting to $60,699.19 were paid by the plaintiffs within 21 days of the notice. As no payment was made the defendants repossessed the tractor on November 4, 1975. Notice to the plaintiffs was also given for the plaintiffs to choose either to reinstate or finalise the hire purchase agreement.

It is maintained that on November 27, 1975 the plaintiffs wrote to the defendants advising that they would choose reinstatement (see "WCC4"). It is also maintained that the plaintiffs and the defendants then agreed to the reinstatement of the hire purchase agreement upon the plaintiffs making the following payments —

(i) Bank draft — United Asian Bank No. 000743	$20,000.00
(ii) Oriental Banking Berhad's cheque No. 101059 post-dated 10.1.76	5,517.72
(iii) Oriental Banking Berhad's cheque No. 101069 post-dated 31.1.76	15,000.00
(iv) Oriental Banking Berhad's cheque No. 101061 post-dated 29.2.76	15,000.00
(v) Oriental Banking Berhad's cheque No. 101062 post-dated 31.3.76	15,000.00
(vi) Oriental Banking Berhad's cheque No. 101063 post-dated 30.4.76	15,000.00
	$85,517.72

A letter evidencing the plaintiffs' agreement is annexed to the affidavit marked "WCC6." It is alleged that except for two sums amounting to $25,517.72, the other four, by post-dated cheques were dishonoured. By reason of the plaintiffs' default in paying the instalments the defendants commenced action on September 30, 1976 against the plaintiffs under Kuala Lumpur High Court Civil Suit No. 2245/76 (see "WCC7"). This civil action was based on hire purchase agreement. Another action against Leong Mun Kong under Kuala Lumpur High Court Civil Suit No. 2244/76 on the cheques issued was also brought.

It is stated that the defendants, approached by plaintiffs to settle the civil actions amicably and out of court settled them. On the defendants' instruction the solicitors wrote on October 27, 1976 to the plaintiffs' solicitors stating the amount the plaintiffs had to pay by way of settlement (see "WCC9").

The plaintiffs and the defendants agreed that upon the plaintiffs paying $65,107.12 the defendants would transfer ownership of the said tractor to the plaintiffs and withdraw both civil actions.

On October 28, 1976 the plaintiffs delivered a bank draft for $65,107.12 to Mr. Wong Choon Wah of Messrs Skrine & Company and Mr. Wong delivered the registration log book and the release of claim ownership letter from Credit Corporation (M) Berhad in respect of the tractor (see "WCC10, WCC11"). On November 9, 1976 the defendants filed notice of discontinuance of both civil actions.

It is the defendants' contention that the dispute, if any, which is denied arising from the repossession of the tractor referred to in paragraph 6 of the Statement of Defence in both civil actions were settled *bona fide* and upon valid compromise made in respect of the hire purchase agreement and the tractor and any question relating to the same cannot be litigated again between the plaintiffs and the defendants in this action and the defendants therefore pray that the court makes an order dismissing it.

The statement of claim alleges that there was a rental agreement dated January 30, 1974 when the plaintiffs hired the tractor. After the termination of the hiring the plaintiffs offered to purchase the tractor from the defendants by letter of April 5, 1975 and that pursuant to the offer the defendants sold the tractor for a total price of $173,500 a deposit of $52,050, five instalments of $20,000 each ($100,000) and first instalment of $21,450.

It is alleged that for purposes of record only, the plaintiffs and the defendants used the defendants' standard form of hire purchase agreement although the intention was that there was to be an outright purchase of the tractor with deferred payments and it was not intended to be a hire purchase under the Act.

The plaintiffs do not dispute that there was default in payment of the balance of purchase price but are contending that the defendants wrongfully repossessed the tractor exercising rights under the Act they did not possess. It is for reason of the wrongful repossession that the plaintiffs are claiming loss and damage.

In the statement of defence the defendants dispute the plaintiffs' allegations of certain facts alleged by the plaintiffs and that the hire purchase agreement made on April 5, 1975 was for purpose of rental only.

At the hearing of the application Mr. T. Thomas counsel for the applicants submitted that the question before the court was whether the plaintiffs are estopped from litigating against the defendants after arriving at a compromise with the defendants in the subject matter in earlier civil suits.

With reference to counsel's submission I do appreciate that this is one of the questions which the court has to consider and I also appreciate that the issue is essentially of law. Nonetheless it is apparent that apart from this question there are also questions of fact which have to be determined and I form the view that they cannot properly be determined on affidavits alone. In the circumstances I feel inclined to hold that the application is one that does not squarely fall within the scope of Order 25 R.S.C. which primarily covers a point of law which, if decided in one way, is going to be decisive of litigation. As the prayer sought in paragraph 1 of the application is for the statement of claim to be struck out as disclosing no reasonable cause of action or frivolous or vexatious or an abuse of the process of the court pursuant to rule 4 of Order 25 the court must necessarily have regard to the settled law that "it is only in plain and obvious cases that recourse should be had to summary procedure under this rule...." (*Mallal's* Supreme Court Practice page 318). In plain language it would mean that the rule shall only apply to an application which clearly relates to a plain and obvious issue of law that can be resolved by the application of rule 4 of Order 25 and once resolved is going to be decisive of litigation.

Mr. Thomas cited a passage of *Halsbury's* Laws of England third edition Vol. 30 page 403 in support of his argument to show that "all or any of the questions in dispute in an action may be settled between the parties by compromise without trial, and if such compromise is *bona fide* and validly entered into, the court does not allow the question so settled to be again litigated between the parties to the settlement."

On behalf of the respondents it is conceded that there was a compromise but it is strenuously argued that the hire purchase agreement was null and void. Reliance is placed upon sections 30 and 31 of the Act and it is further argued that the circumstances under which the hire purchase agreement was made

and the mode of payment governing such agreement do not warrant the application of rule 4 of Order 25. Mr. Jag-Jit Singh cited two cases, firstly, *In re Harmony and Montague Tin and Copper Mining Company*[1] (*Spargo's case*) and secondly *Re Moody*[2] in support of the respondents' contention.

In consideration of the materials before the court and bearing in mind the submissions made by counsel for both the applicants and the respondents and in view of the points of law involved and the facts which seem to be in dispute, I am not satisfied that the respondents' contention is devoid of any merit whatever and bearing in mind the scope of Order 25 rule 4 R.S.C., I am inclined to think, indeed in the present case I am disposed to hold that it is not such a case that I ought to summarily strike out the statement of claim and the application must necessarily fail. For these reasons I dismissed the application with costs.

Application dismissed.

Solicitors: *Skrine & Co.; Jag-Jit Singh & Co.*

HOE GUAN INVESTMENT v. COLLECTOR OF LAND REVENUE, BATU PAHAT

[O.C.J. (Ajaib Singh J.) November 19, 1977]
[Muar — Land Reference No. 1 of 1975]

Land Law — Land acquisition — Reference to court — Onus on applicant to show award inadequate — Market value — Sales of adjoining land — Evidence of expert land valuers — Land Acquisition Act, 1950, s. 38(5).

This was a reference to the court by the Collector of Land Revenue consequent upon the application of the applicants requiring him to refer their objection to the amount of compensation awarded by the Collector in respect of land acquired by the State Authority to the court. The Collector had made an award of $1.30 per square foot. The evidence adduced in this case was the sale of adjoining lands and the evidence of expert land valuers.

Held: (1) the onus was on the applicants to show *prima facie* that the award was inadequate and thereupon it was for the Collector of Land Revenue to support his award basing on such evidence as he may have to offer;

(2) in this case taking all factors in regard to the adjoining lands into consideration in relation to the price they were sold and the evidence adduced, the Collector's award ought to be increased to $1.80 per square foot.

Cases referred to:-

(1) *Chuah Say Hai & Ors.* v. *Collector of Land Revenue, Kuala Lumpur* [1967] 2 M.L.J. 99, 100.

(2) *Assistant Development Officer, Bombay* v. *Tayabally Allibhoy* A.I.R. 1933 Bom. 361, 364.

LAND REFERENCE.

Thara Singh Sidhu for the applicants.

Suleiman bin Hashim (Legal Adviser, Johor) for the respondent.

Ajaib Singh J.: This was a reference made to the court by the Collector of Land Revenue under section 38(5) of the Land Acquisition Act 1960 consequent upon the application of the liquidator of Hoe Guan Investment Private Limited to the Collector requiring him to refer the liquidator's objection to the amount of compensation awarded by the Collector in respect of the land acquired by the State authority under the provisions of the Land Acquisition Act 1960. The land acquired is in Lot No. 4723 C.T. 3735 having an area of 576 acres 3 roods. The acquired land itself represents only a small portion of Lot No. 4723 and is 2 acres 1 rood 28 poles in extent. A notice in Form A under section 4 of the Land Acquisition Act was gazetted on May 10, 1973 followed by a declaration of intended acquisition dated March 28, 1974 as required under section 8 of the Act so that the market value of the land acquired had to be determined as at May 10, 1973 (hereinafter referred to as the "relevant date") by virtue of the provisions of paragraph 1(1)(a) of the First Schedule to the Land Acquisition Act 1960.

The collector held an inquiry under section 12 of the Land Acquisition Act on May 4, 1974. At the inquiry one Tan Seow San a representative of the liquidator of Hoe Guan Investment Private Limited testified that the land was vacant land except for a few coconut trees and that it had not been developed yet because it was not considered suitable for development. He said that the land was about 1¼ mile from the centre of Batu Pahat town facing the highway from Muar to Ayer Hitam via Batu Pahat and at the rear was a one way road to Jalan Pasir Tinggi. He said that he valued the acquired land at $4.50 per square foot based on the fact that the land was 1¼ mile from town, a piece of land about 10,000 square feet in front of the hospital was valued at $6.50 per square foot by Encik Talhar, a land valuer, for division purposes and thirdly that there was a land for 5 shophouses in front of the JKR workshop which was valued at $6.25 per square foot by Encik Talhar. The shophouses were built before the war and were still in occupation.

At this stage Tan Seow San requested the Collector for an adjournment of the inquiry for two weeks to enable him to submit a complete valuation report on the land. This was allowed by the Collector and in due course a valuation report dated May 16, 1974 was submitted to the Collector by Messrs C. H. Williams, Talhar & Wong Sdn. In this report the valuer Encik Mohd Talhar bin Abd. Rahman valued the property acquired at $5 per square foot basing his claim as the full market value of the land. He stated that he made the valuation by the comparative approach that is to say sales of land in the vicinity and also in other areas which compared and contrasted with the land acquired. As a further comparison he stated that he considered sales in developed sites and properties and analysed them providing the basis for this valuation and enclosed a schedule showing recent transactions.

On September 28, 1974 the Collector made an award of $1.30 per square foot taking the following factors into consideration (page 10 of record) —

"1. The land acquired is 2 acres 1 rood 28 poles and is a portion of Lot No. 4723 C.T. 3735 which is 576 acres 3 roods 00 pole. The land has not been divided and there is no step taken to develop the land.

2. The land is situated at the junction from Ayer Hitam to Muar and is about 1½ miles from town. Greater parts of the land are surrounded with low class and middle class government quarters in town and at the rear portion is the N.E.B. Building. Looking at this development therefore the area is not yet suitable for industrial or shopping project. It is my opinion that the land is suitable for housing development.

3. The land has been gazetted under section 4 of the Land Acquisition Act on 10, May 1973 and therefore the valuation is based as on 10 May 1973.